

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN FLYNN III,

Plaintiff,

V.

DR. KHURSHID *et al.*,

Defendants.

Case No. C05-5489RBL

REPORT AND RECOMMENDATION:

**NOTED FOR:
January 27th, 2006**

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is defendant's motion to dismiss the last remaining defendant, John Doe Gordon. (Dkt. # 19). Plaintiff supports the motion. (Dkt. # 20).

DISCUSSION

There were three defendants originally named in this action. Defendant Khurshid has been dismissed. (Dkt. # 14). Defendant John Doe Denison could not be served. (Dkt. # 11). Defendants claim they could not identify Mr. Denison. (Dkt. # 19). Now the only remaining defendant moves for dismissal and the motion is supported by plaintiff. (Dkt. # 19 and 20).

In light of plaintiff supporting defendant's motion the court concludes John Doe Gordon

1 should be dismissed from this action. As there is no remaining defendant the action should be
2 dismissed as well.

3 CONCLUSION

4 As the motion to dismiss is not opposed the court should dismiss this action. In light of the
5 prior dismissal the action should be dismissed without prejudice. A proposed order accompanies this
6 Report and Recommendation.

7 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
8 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.
9 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
10 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule
11 72(b), the clerk is directed to set the matter for consideration on **January 27th, 2006** as noted in the
12 caption.

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14 DATED this 3rd day of January, 2006.

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18 Karen L. Strombom
United States Magistrate Judge

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